IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1849 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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M/S. SONAL TEXTILES, - Petitioner(s)

Versus

BABULAL HIRJIBHAI - Respondent(s)

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Appearance :
MR SB PANDIT for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/12/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 227 of the Constitution of India,

praying for quashing and setting aside the judgment and order dated 14.2.1991 and dated 25.6.1993 passed respectively by the Labour Court in Application No.T-14/1986 and Appeal (I.C.) No.15/1992 passed by the Industrial Court.

2. This Court has issued notice on 9.2.1994 and granted ad interim relief in terms of para-23(A), whereby the order dated 14.12.1991 passed by the Labour Court in Application No.T-14/1986 as well as the order dated 25.6.1993 passed by the Industrial Court in Appeal (I.C.) No.15 of 1992 were stayed. The Court, thereafter, admitted the petition and issued rule on 28.3.1994. While issuing rule, the Court has observed that it appears to be an important question pertaining to the jurisdiction arising out of limitation of Labour Court and ad interim relief was

continued till further order.

3. It appears that despite the service of notice nobody appeared on behalf of the respondent. On earlier occasion this Court issued rule and, thereafter, again fresh rule on 12.8.2005 was issued. The address given in the application is the address of Union. Office endorsement shows that the rule has not been received back. Since the matter is of 1994 and earlier rule has been served on the respondent, no useful purpose would be served to wait for service of fresh rule and hence the Court decides the matter on merit.

4. It is the case of the petitioner that the petitioner has been running a small powerloom factory as a sole proprietary concern. The respondent was employed as casual daily rated employee in the said factory. The respondent

stopped coming for work of his own accord with effect from 10.5.1985. It is also the case of the petitioner that the respondent made a complaint to the Government Labour Officer regarding his alleged termination of service by the petitioner. As informed by the Government Labour Officer, the petitioner called him in his office on 27.9.1985 and told him in presence of the respondent that he had not terminated the services of the respondent, but the respondent had stopped coming to the factory on his own accord, and that if he still reported for work, he would be given work. The respondent agreed in presence of the Government Labour Officer to join duty from the next day. But he had never turned up for work at any time thereafter. The petitioner thereafter addressed a letter dated 10.10.1985 to the Government Labour Officer and on 15.10.1985 to the Union of which the respondent was the

member and informed that the respondent had not reported for work.

5. Despite the aforesaid facts the respondent has filed Application bearing No.T-14 of 1986 before the Labour Court, Ahmedabad, under Section 78 and 79 of the Bombay Industrial Relations Act, 1946, on 7.1.1986 alleging that his service was illegally terminated with effect from 10.5.1985 and prayed for reinstatement with full back wages. The case of the petitioner is that the petitioner had engaged advocate Shri Kantilal H. Patel to appear in the matter and conduct the proceedings before the Labour Court and gave all necessary and relevant instructions and papers required in the said proceedings. A written statement denying the respondent's allegations was duly filed on behalf of the petitioner. As the petitioner had failed to

remain present at the time of hearing, the Labour Court passed an ex-parte order on 14.2.1991 whereby the petitioner was directed to reinstate the respondent in service with full back wages. The petitioner thereafter filed an application before the Labour Court for cancelling exparte order, vide order dated 14.2.1991. The Labour Court rejected the petitioner's aforesaid application for cancellation of exparte order by an order dated 10.9.1991. It is the case of the petitioner that the petitioner was not aware of the order dated 10.9.1991 rejecting his application for cancellation of exparte order as he was not informed of the same by his advocate nor did he receive copy of the said order from the Court. He came to know only when he received notice from this Court in the Contempt Application filed by the respondent.

6. It is also the case of the petitioner that immediately after the receipt of the contempt notice, the petitioner preferred an Appeal (I.C.) No.15 of 1992 before the Industrial Court against the exparte order dated 14.2.1991 passed by the Labour Court. As there was delay in filing the appeal, the petitioner also filed an application for condonation of delay. Industrial Court granted order for staying the operation of the Labour Court's ex-parte order. The Industrial Court vide its order dated 1.10.1992 condoned the delay and dismissed the petitioner's appeal on merits. Since the petition was only fixed for hearing of application for condonation of delay and the arguments were advanced only for that purpose and that not a word was argued on merits of the appeal in question, the order passed by the Industrial Court is absolutely illegal and beyond jurisdiction.

7. Being aggrieved by the said order of the Industrial Court, the present petition is filed by the petitioner.

8. Mr.S.B.Pandit, learned advocate appearing for the petitioner has submitted that the respondent has not given approach notice as required under Section 42(4) of the B.I.R. Act before filing the application under Sections 78 and 79 of the said Act, and, therefore, the application is liable to be rejected. He has further submitted that even if it is assumed that the respondent has given approach notice, the same is barred by limitation and, therefore, the same is required to be rejected. Mr.Pandit further submitted that the petitioner has not terminated the services of the respondent and the respondent has stopped coming to the factory of his own accord without

informing him and that inspite of the petitioner having written a letter to the respondent to resume work, the respondent failed to report for work. Mr.Pandit further submitted that in the exparte order passed by the Labour Court, the Labour Court found that the respondent has produced a copy of the approach notice given by him under Section 42(4) of the Act, but there was no finding that the said notice was received by the petitioner or that the application was in time. He has further submitted that for maintainability of application under Sections 78 and 79 of the B.I.R.Act, it is a condition precedent that not only the approach notice is required to be given but it should have been received by the employer and further that the application should have been filed within six months from the date of termination of service of the employee. The Labour Court ignored both these

material issues and failed to decide the same. Mr.Pandit further submitted that in the appeal preferred against the aforesaid ex-parte order of Labour Court, the petitioner had taken, inter alia several grounds, which were not taken into consideration. The petitioner has submitted before the Industrial Court that the Labour Court has not considered the contentions regarding non receipt of the approach notice by the appellant. He has further submitted that the order passed by the Labour Court is contrary to the principles laid down by the Hon'ble Supreme Court and the High Court that giving of approach notice by the respondent employee and the receipt thereof by the appellant employer are condition precedent to the filing of the application before the Labour Court under the provisions of the B.I.R.Act, 1946. Mr.Pandit further submitted that even the preliminary contention raised before the

Labour Court was not considered. The contention was that the application was not legally tenable in view of the fact that the respondent employee had not given approach notice under Section 42(4) of the B.I.R. Act, 1946. Since this contention was specifically raised by the appellant employer in his written statement, the respondent employee therein must establish by sufficient evidence that the approach notice purported to have been given on 18.12.1985 was actually received by the petitioner employer by producing in the Court the postal acknowledgment evidencing the receipt by the petitioner. It was, therefore, contended that the respondent - employee has failed to prove that the so called approach notice was received by the petitioner. Mr.Pandit further submitted that the petitioner has also raised contention before the Industrial Court that the alleged application

was barred by limitation as the approach notice according to the respondent's own averments was given by him on 18.12.1985, and the Labour Court ought to have dismissed the application on the ground of same being barred by limitation.

9. Mr.Pandit further submitted that the Industrial Court had inquired from the advocate of the petitioner if the petitioner was still ready and willing to give work to the respondent on the same post and on the same terms, and if so to give pursis to the Court to that effect. Accordingly, the petitioner's advocate gave a pursis in the Court on 10.8.1992 informing that the petitioner was ready and willing to give work to the respondent and also stated that even in the past the petitioner made similar offer but the said offer was not accepted by the respondent.

Mr.Pandit therefore submitted that the order passed by the Labour Court as well as Industrial Court is contrary to the facts and evidence on record and the Court has not addressed itself on the points in issue and there was total lack of application of mind and it is irrational and contrary to the provision. He has, therefore, submitted that both the orders under challenge are required to be quashed and set aside.

10. The petition was filed on 21.2.1994, till this date neither any affidavit in reply is filed nor any appearance on behalf of the respondent was filed. It appears that the contentions which have been raised in the petition have gone uncontroverted. All the three issues which have been raised before this Court have merit and substance and the Court cannot ignore the said contentions even while

entertaining the petition under Article 227 of the Constitution of India. All these contentions have gone to the root of the issue and they are all legal contentions. If the approach notice has not been given when application is filed then no relief can be granted in the said application. Even if the application is given and it is given beyond the prescribed period of limitation then no relief can be granted. It is on record that the petitioner has given certain offer to respondent to resume the work. However, the respondent has not accepted. Pursis to that effect was filed before the Industrial Court, even that was not taken into consideration. All these evidences are sufficient to establish that the petitioner has not terminated the service of the respondent and the respondent of his own has left the service of the petitioner. In this view of the matter, the order passed by

the Labour Court for reinstatement and back wages and also the order passed by the Industrial Court confirming the order of Labour Court are absolutely untenable and against the evidence on record and, therefore, deserve to be quashed and set aside. Accordingly, both these orders are quashed and set aside. This petition is allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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